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Amazon.com Services LLC

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-Defendant,

vs.

APPLE INC.,

Defendant, Counterclaimant.

Case No. 4:20-cv-05640-YGR

**DECLARATION OF ANDREW
BENNET IN SUPPORT OF
NONPARTY AMAZON.COM
SERVICES LLC'S JOINDER IN
DEFENDANT APPLE INC.'S
ADMINISTRATIVE MOTION TO
SEAL PX-2339**

I, Andrew Bennet, declare as follows:

1. I make this declaration in support of Nonparty Amazon's Joinder to Defendant, Apple Inc.'s ("Apple") Administrative Motion to Seal PX-2339 (the "Motion to Seal," Dkt. No. 514). I am over the age of 18 and make this declaration based on my personal knowledge.

2. I am Director of Third-Party Device Partnerships for Prime Video, and am responsible for the distribution of the Prime Video app on third-party devices. Amazon.com Services LLC is the parent company of AMZN Mobile LLC (together, "Amazon").

1 3. Document PX-2339 (“PX-2339”) is an addendum that supplements the Developer
2 Program License Agreement between AMZN Mobile LLC and Apple. A true and correct
3 *redacted* copy of PX-2339 is attached as Exhibit 1. An *unredacted* copy of PX-2339 is attached
4 to Apple’s Motion to Seal, at Attachment 4. *See* Dkt. No. 514-4.

5 4. The Developer Program License Agreement between Amazon and Apple, as
6 supplemented by PX-2339, is the operative agreement between Apple and Amazon with respect
7 to the provision of Amazon Prime Video streaming services on iOS and tvOS devices.

8 5. PX-2339 contains competitively sensitive, non-public terms.

9 6. Amazon has taken the necessary and appropriate measures to maintain the
10 confidentiality of these terms. In negotiating PX-2339, for example, Amazon and Apple agreed
11 to detailed confidentiality provisions, including non-disclosure obligations. Those confidentiality
12 provisions are set forth in PX-2339 paragraphs 13.1 to 13.5. Amazon has also taken steps to
13 maintain the confidentiality of PX-2339 throughout the pendency of this litigation.

14 7. Amazon and Apple engaged in lengthy, strategic, non-public negotiations that
15 resulted in PX-2339. The terms of PX-2339 are the product of these detailed negotiations, and
16 many of its terms are unique to Amazon. Although PX-2339 contains terms similar to those that
17 govern Apple’s Video Partner Program (the “Program”), there are differences between the
18 Program terms and the terms negotiated in PX-2339.

19 9. Amazon considers the entirety of PX-2339 to be highly confidential, but certain
20 portions are especially sensitive. Specifically, certain terms in the preamble and signature blocks,
21 and at paragraphs 2.2, 4.2, 5.1, 8.3, 8.5, 9.4, 11.2 and 14.1 constitute Amazon’s highly
22 confidential, proprietary information.

23 10. Amazon has devoted significant resources to developing its video streaming
24 business, and the terms on which Amazon conducts its business and agrees to provide its video
25 streaming services are closely-held and proprietary.

1 11. Amazon has unique and proprietary processes, strategies, techniques, procedures,
2 and plans surrounding the operation, distribution, and promotion of video streaming services on
3 iOS and tvOS devices.

4 12. Amazon's highly confidential proprietary business information provides it with a
5 competitive edge in the video streaming services marketplace.

6 13. The proprietary terms on which Amazon agrees to provide its video streaming
7 services are closely-held and competitively sensitive, and disclosure could cause harm to Amazon.

8 14. Disclosure of certain terms of PX-2339 could harm Amazon by providing
9 prospective business counterparties and competitors with unwarranted visibility into the
10 proprietary strategies, procedures, and plans regarding the operation, distribution, and promotion
11 of Amazon's video streaming business.

12 15. Disclosure of certain terms in PX-2339 would reveal the specific, detailed terms
13 to which Amazon ultimately agreed to provide its video streaming services on iOS and tvOS
14 devices. Widespread knowledge of what business terms Amazon has agreed to in the past would
15 put Amazon at a significant disadvantage in future business negotiations.

16 16. Disclosure of certain terms in PX-2339 would reveal the areas in which Amazon
17 negotiated for unique terms to provide its video-streaming services on iOS and tvOS devices. In
18 particular, disclosure would show what terms Amazon negotiated for in connection with its
19 anticipated future technical capabilities and features, and other forward-looking business plans.
20 Competitors would be provided with insight into, not only Amazon's existing video streaming
21 business, but also into areas that Amazon considered important for anticipated future technical
22 capabilities, features, and product development.

23 17. In addition, Amazon has an ongoing business relationship with Apple for the
24 provision of video streaming services on iOS and tvOS devices, and disclosure of certain terms of
25 PX-2339 may prejudice Amazon's ability to negotiate subsequent agreements with Apple
26 regarding this same content. If competitively sensitive terms became public, other developers
27 negotiating with Apple might demand those same terms – causing competitive disadvantage and

1 economic harm to Amazon. It is also possible that Apple might cease offering those terms to any
2 party, including Amazon – again causing competitive disadvantage and economic harm to
3 Amazon.

4 18. Amazon’s request for sealing PX-2339 is as narrowly tailored as possible to avoid
5 causing harm to Amazon, a non-party to this litigation. Amazon seeks to seal only highly
6 confidential proprietary information – as set forth in the PX-2339 preamble and signature blocks,
7 and paragraphs 2.2, 4.2, 5.1, 8.3, 8.5, 9.4, 11.2 and 14.1.

8
9 I declare under penalty of perjury of the laws of the United States of America that the
10 foregoing is true and correct. This declaration was executed this 3rd day of May 2021, in
11 Seattle, Washington.

12
13 /s/ Andrew Bennet
14 Andrew Bennet
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1 I hereby attest that I have on file all holographic signatures corresponding to any
2 signatures indicated by a conformed signature (/s/) within this e-filed document.

3 DATED this 3rd day of May 2021.
4

5 DAVIS WRIGHT TREMAINE LLP
6 Attorneys for Amazon.com Services, LLC
7

8 By: /s/ Molly Tullman
9 Molly N. Tullman (CA State Bar No. 244928)
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